REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2012- 01667.

BETWEEN

SCOTT MONTANO

Claimant

AND

LYDIA SAMPSON

Defendant

BEFORE THE HONOURABLE MADAM JUSTICE JUDITH JONES

Appearances:

Mr. H. Ramnath for the Claimant.

Ms. R. Joseph for the Defendant.

Ruling

This is an application by the Defendant for summary judgement. By it the Defendant contends that the Claimant has no realistic prospect of success on the claim. On the pleadings it is not in dispute that the Defendant received a sum of $50,000 from the Claimant in or about July 2010. The Claimant's case is based on money lent. In this regard it is incumbent on the Claimant to show that the money was his.

According to the Statement of Case on or about the first week of July 2010 the Claimant orally agreed to lend the Defendant the sum of $50,000 to be used by the Defendant as collateral for a loan taken from her credit union to purchase a motor vehicle. With respect to the payment of the

$50,000.00 he pleads that on 7 July, he gave the Defendant $10,000 in cash comprising $4,000.00 withdrawn from his bank account at RBTT Bank Ltd Siparia branch and $6,000 in cash which he had at home. On the same date he pleads that he withdrew $40,000 from his account at RBTT Bank limited in order to issue a cheque to the Defendant for the same amount. He pleads that because the Defendant was informed that the cheque made out in her name would not be accepted he then re-deposited the $40,000 into his account and re-issued another cheque for that amount to the credit union which he deposited into the Defendant's account with the credit union.

He pleads that the Defendant indicated she would repay the $50,000 by monthly instalments commencing on 31 July 2010. Save with respect to the $6000 in cash the Claimant does not specifically plead that the balance of the $50,000, that is the sum of $44,000, was his money. The Claimant merely pleads that this money was withdrawn from his account at RBTT Bank Limited.

In response to these facts the Defendant by her defence denies that there was ever any agreement between them for the Claimant to lend her $50,000 or any other sum of money. She avers that a cohabitational relationship existed between the parties at the time which relationship had existed for approximately 5 years prior to July 2010 and that during the course of this relationship she obtained and repaid various loans from her credit union to assist the Claimant with expenses for the cohabitational home constructed during the years 2007 to 2009. According to the Defendant the parties agreed that she was would withdraw the sum of $40,000 from the parties' joint bank account. In accordance with that agreement the Claimant caused a cheque to be issued from their

joint account made payable to the credit union. Of the sum of $10,000 she admits that this sum was given to her in cash by the Claimant but she pleads that this was to liquidate a loan incurred by her for the installation of a PVC ceiling at their home. In particular the Defendant pleads that the sum of $40.000.00 was money belonging to the both of them.

By way of reply the Claimant does not deny the existence or length of cohabitational relationship; the fact that the cohabitational home was built during the relationship or that the account referred to by him in his statement of case as his was in fact the parties' joint account. Indeed, it would be very difficult for the Claimant to deny this latter fact since an examination of one of the documents relied on and annexed to his statement of case in support of the withdrawal of $40,000.00 pleaded shows of the sum of $40,025.00 being withdrawn from an account at RBTT Bank Siparia branch in the name of both parties. Neither does he in his reply aver that the money in the account belonged to him. He however denies that the Defendant obtained and personally repaid loans taken from the credit union to assist with expenses for the cohabitational home.

On the pleadings as they stand, therefore, is not in dispute that the parties were in a cohabitational relationship for a period of at least five years or that during that period a home in which they lived was constructed. The presumption is therefore is that the parties come within s. 2 of the Cohabitational Relationships Act and that the provisions of that Act applies to the relationship between the parties.

Neither is it in dispute that the $40,000 came from an account held by the parties jointly. I am satisfied that with respect to the joint bank account the law supports the Defendant's submission that the inference is that a beneficial co-ownership was intended unless there is evidence demonstrating an intention to the contrary.

The Claimant submitted that he intended to lead evidence to rebut this presumption. The problem is that the Claimant has not by way of his reply, or at all, placed before the Court any facts which would allow him to lead the evidence he plans to lead to rebut the presumption. In this regard the rules are clear. The Claimant must include on the claim form or his statement of case a short statement of all the facts on which he relies: Part 8.6(1). A statement of case includes a reply to a defence. In the absence of a specific averment by the Claimant that the money was his it is clear that in order to prove that the money in the account was his it was obligatory for the Claimant in his reply to plead that the money in the account was his and the facts upon which he relied to prove this. He failed to do so.

As a result of his failure the Claimant will not be in a position at the trial to adduce any evidence to rebut the presumption raised by the fact of the joint account. It follows therefore that at least with respect to the $44,000 which came from the parties' joint account the Claimant will not at the trial be in a position to rebut the presumption that the $44,000.00 was monies held by the parties jointly. In the circumstances with respect to that sum I am of the opinion that the Claimant has no realistic prospect of success. The sum of $6,000.00 which remains represents sums recoverable by proceedings brought in the Petty Civil Court and not in the High Court.

Further and perhaps of even more importance is the fact of the existence of the cohabitational relationship. This is not disputed by the Claimant. It would seem to me that in the context of the cohabitational relationship it will be difficult, if not impossible, for the Claimant to isolate this transaction from the course of dealings between the parties as a result of their relationship. The question therefore is whether the Claimant can on the facts show an intention to enter by the parties to enter into a legally enforceable relationship. It would seem to me that the Claimant's remedy, if he has any, is better served in proceedings brought pursuant to the Cohabitational Relationships Act rather than in the court's civil jurisdiction.

In this regard the passage adopted by Blackman J. in the case of **Popo Basdeo v Khelawan and Republic Finance Merchant Bank Limited No 4722 of 1989** and relied on by the Defendant herein is worth repeating:

> "The decisions in these more recent in English cases seem to rest on the assumption that where a bank account is opened on the terms that either spouse may make withdrawals, it is reasonable to suppose that the parties did not intend that their respective rights to benefit from the account should be ascertained and delimited strictly according to the legal principles governing joint property.
>
> As between themselves the arrangement is best presumed to have been one of mutual trust or confidence rather than one creating legal rights and duties. It is respectfully submitted that this view is sound, and is applicable to the same extent in the case where only one party contributes to the account as it is where deposits are made by each party."

I share this view, it seems to me that in this regard there is no difference between a husband and wife and parties who have engaged in a cohabitational relationship within the meaning of section 2 of the Cohabitational Relationships Act. It would seem to me that in these circumstances I am of the opinion that even if the Claimant were able to overcome the hurdle presented by the fact of the joint bank account he would be unable to establish an intention to create legal relations.

Accordingly I am of the view that the Defendant has satisfied me that the Claimant has no realistic prospect of success on the claim and the claim is dismissed.

Dated this 19th day of February, 2013.

Judith Jones
Judge